

Am I being treated fairly at work?

What are my employment rights?

Where do I go for help?

CASUAL EMPLOYMENT

DISCLAIMER

This Infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. NOTE: This infosheet should be read in conjunction with JobWatch's "Employment Contracts" infosheet.

Casual employment is an increasingly widespread form of employment in Australia. This information provides a summary of the entitlements of casual workers and sets out how they vary from those of permanent workers.

What is casual employment?

Casual work is a term that is used to describe a range of employment situations where the work is not permanent (i.e. not ongoing). The essence of casual work is that there is no entitlement to ongoing employment or certainty in the days, hours or shifts that you will work.

Casual workers are entitled to a **higher minimum rate of pay** and they have **different entitlements** to permanent employees.

Who is a casual employee?

Ascertaining whether you are a permanent or casual employee is sometimes difficult. As a general guide, you are **likely to be a casual** if:

- you were told at the start of your employment that you were a casual;
- you work irregular hours and you are paid a higher hourly rate of pay (because you receive a casual loading); or
- you do not get paid annual or personal leave (including sick and carer's leave).

On the other hand, you are **likely to be a permanent employee** if you work regular hours and you accrue annual leave and personal leave. If you are uncertain about this, you should obtain legal advice regarding your situation.

Flexibility vs Uncertainty

Casual work suits some employees because it offers a greater level of flexibility about working hours than other forms of employment and it provides a higher rate of pay instead of other entitlements. However, this flexibility can also be a disadvantage because it means that you have no certainty about your working hours and no guarantees about ongoing work.

If you are truly a casual employee, your shifts can be cancelled or you can be sent home early if you are not needed by your employer. While in theory you may decline work, it can be difficult to refuse hours if you are relying on your employer to offer you work in the future.

Casual Loading

If you are a casual, you are not entitled to paid holiday or personal leave (including sick and carer's leave). However, you are paid a higher hourly rate of pay to make up for this. This extra money is called a **casual loading** and it is generally between 15% and 25% of the hourly rate paid to permanent workers. This loading is also compensation for the uncertainty of your continuing employment.

Contact the Fair Work Infoline on 13 13 94 to find out the correct rate of pay for your type of work

Whether you should be paid a casual loading, and at what level, will depend upon what type of employment arrangement covers you.

Conditions and entitlements for casual workers

In Victoria, your minimum terms and conditions will be specified by one or more of the following:

- A **Modern Award** (this is a document that contains terms and conditions of employment for employees in particular occupations or industries. You can find out whether you are covered by an award by calling the Fair Work Infoline on 13 13 94);
- An **Enterprise Agreement** (i.e. a collective agreement) or
- The **National Employment Standards** (this is a basic set of 10 minimum conditions).

Casuals without an Award or Enterprise Agreement

If you are a casual employee whose minimum terms and conditions are not regulated by an award or enterprise agreement, the following conditions apply (unless you can negotiate better terms with your employer):

- you are entitled to a flat hourly pay rate (including the casual loading) for every hour you work. You are not entitled to penalty rates for working **overtime** or on the weekend;
- you may be entitled to an unpaid 30 minute **break** for each 5 continuous hours worked;
- you do not accrue paid leave entitlements such as **annual leave** or **personal leave** (ie, you do not get paid sick or carer's leave);
- you are entitled to up to two days of unpaid **carer's leave** for each time a member of your immediate family or household requires care or support because of illness or injury or because of an unexpected emergency. This period of leave may be taken as a single unbroken period or it may be broken up as agreed between you and your employer. Unpaid carer's leave is subject

to you notifying your employer as soon as reasonably practicable that you need the leave and providing a medical certificate or statutory declaration;

- You are entitled to 2 days of unpaid **compassionate leave** for each occasion when a member of your immediate family or household contracts or develops a personal illness or sustains a personal injury that poses a serious threat to his or her life or dies. Strict notice and evidence requirements apply.
- you are not entitled to payment if you do not work on a gazetted **public holiday**, even if the public holiday falls on a day when you would usually work;
- there is no minimum or maximum number of hours that you must be rostered to work;
- you are not entitled to notice of **termination** and you do not have to give **notice** if you wish to resign;
- you are entitled to be paid **long service leave** on a pro rata basis, however you need to have continuous employment with your employer for at least 7 years;
- you have an entitlement to **unpaid parental leave** (including maternity, paternity and adoption leave) if you are a casual employee who has been engaged on a regular and systematic basis for at least 12 months.

Casuals employed under an Award or Enterprise Agreement

If your employment is covered by an award or enterprise agreement then your minimum terms and conditions of employment may be different than those outlined above. For example:

- you may be entitled to overtime penalty rates if you are required to work outside of the normal span of hours (e.g. time and a half or double time for working at night or on weekends);
- you may be entitled to be paid long service leave on a pro rata basis after completing a period of continuous employment with your employer for a period of less than 7 years;
- there may be a minimum number of hours for which you must be rostered to work on any one shift.

To find out what your specific minimum entitlements are under an award or Enterprise Agreement, contact the Fair Work Infoline on 13 13 94.

Rights for all Casuals

In addition, the following applies to all casuals in Victoria:

- an employer must make superannuation contributions into an approved superannuation fund for employees who earn more than \$450 gross per month. However, an employer does not have to make contributions for employees under 18 years of age who work less than 30 hours per week. You can get more information about this by reading the JobWatch infosheet on Superannuation;
- like permanent employees, casual employees may be entitled to compensation for lost earnings and/or for medical expenses if they are injured at work;

- casuals are protected by the same occupational health and safety laws that protect other workers, meaning that employers are required to provide and maintain a safe and healthy workplace;
- casuals can use equal opportunity and anti-discrimination laws in the same way as other workers;
- casuals are entitled to join a union.

Termination of Employment

As a casual employee, you are protected against unlawful adverse action by your employer as well as, in certain circumstances, unfair dismissal.

If you are in any doubt about whether you are a casual employee or whether you have grounds for making a claim, it is important to ask for more information from JobWatch, your union or a lawyer. You must act urgently because there is **a time limit of 21 days** from the date of your dismissal to make an unfair dismissal or General Protections Dispute termination claim at the Fair Work Commission.

For more information see JobWatch's "Unfair Dismissal and General Protections Dispute" infosheets.

As an alternative to an unfair dismissal or a General Protections Dispute termination claim, consider whether your termination of employment was somehow discriminatory on the basis of one of the protected characteristics (eg, sex, race, disability, age etc) which might enable you to make a discrimination claim.

For more information about anti-discrimination laws, contact the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission. You have up to 1 year from the date the discrimination occurred to make a discrimination claim.

Where to get help

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| Fair Work Infoline (Office of the Fair Work Ombudsman) | 13 13 94 |
| Fair Work Commission Helpline | 1300 799 675 |
| Australian Human Rights Commission | 1300 656 419 |
| Victorian Equal Opportunity and Human Rights Commission: | (03) 9281 7111 1800 134 142 |
| JobWatch (Telephone interpreters available for non-English speakers.) | Metro: 9662 1933 Rural: 1800 331 617 www.jobwatch.org.au |
| ACTU Worker Information line (for referral to a union): | 1300 362 223 |
| Law Institute of Victoria (for referral to a lawyer): | (03) 9607 9550 |
